

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN RE:)
) Bankruptcy Action
) 08-14631-GMB
SHAPES/ARCH HOLDINGS,)
L.L.C.,)
) Chapter 11
Debtors,) Camden, New Jersey
) May 6, 2008
) 10:47 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE GLORIA M. BURNS
UNITED STATES BANKRUPTCY COURT JUDGE

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U.S. BANKRUPTCY COURT
FILED
CAMDEN, N.J.

(Appearances Continued)

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1 (Call to the Order of the Court)

2 THE COURT: Please be seated. I guess you're the
3 only one who wanted to be here today.

4 MR. SEIDEN: I actually didn't even know that it was
5 -- that they were doing it by phone. But I talked to one of
6 the guys, so it seems like everything's okay.

7 THE COURT: Okay. Mary, are you ready?

8 MS. LAMPONE: Yes.

9 THE COURT: Hello? Hello?

10 MR. FELGER: Hello, Your Honor. Mark Felger of
11 Cosen, O'Connor on behalf of the debtors.

12 THE COURT: All right. Why don't we have everybody
13 else put their appearance on.

14 MR. SCHARMETT: Gary Scharmett and Paul Patterson on
15 behalf of CIT and the bank group, Chase and Textron.

16 MR. BRODY: Good morning, Your Honor. Alan Brody and
17 Nancy Mitchell on behalf of Arch Acquisition.

18 MS. HILDABRANDT: And Martha Hildabrandt on behalf of
19 the United States Trustee.

20 MS. BOURKOFF: Good morning, Your Honor, Elana
21 Bourkoff -- excuse me, Cole, Schotz, Meisel, Forman & Leonard,
22 on behalf of the Committee. And Mr. Halperin's going to come
23 on in just a second.

24 MR. POSLUSNY: Good morning, Your Honor. Jerrold
25 Poslusny, Cozen, O'Connor, on behalf of debtors.

Colloquy

Page 4

1 THE COURT: Anybody else?

2 MR. SHAPIRO: Joel Shapiro from Blank, Rome, on
3 behalf of the Arcus entity.

4 THE COURT: Anybody else? All right. Just for the
5 record, counsel for Pennsauken Township just happens to be here
6 in Court. Do you want to put your appearance on the record,
7 please?

8 MR. SEIDEN: Yes, Your Honor. Stuart Seiden from
9 Parker, McCay, for Pennsauken Township.

10 THE COURT: All right. Mr. Felger?

11 MR. FELGER: Yes. Thank you, Your Honor. Thank you,
12 again, for accommodating the parties this morning. Your
13 indulgence is for the parties have borne fruit.

14 I believe we're here to report that we've resolved
15 all of the remaining issues with respect to the debtors DIP
16 financing motion.

17 As Your Honor will recall, Your Honor entertained a
18 chambers conference with the parties yesterday, during which
19 the parties indicated that the parties were working all weekend
20 to deal with the issues, and there were literally dozens of
21 issues that had to be worked through. And as of yesterday,
22 when we got together with Your Honor, we had just 4 or 5 issues
23 left to bridge. Your Honor assisted us with Your Honor's
24 thoughts yesterday, and the parties continued to work yesterday
25 afternoon, and evening, and this morning. And as we arrived to

Colloquy

Page 5

1 our respective offices this morning, we had just two issues
2 that remained. And with Your Honor's indulgences over the past
3 hour or so, I believe we've been able to bridge those last two
4 issues, and we're now at a point to move forward and submit a
5 revised form of order on what I'm calling the Arcus/Arch term
6 DIP financing agreement.

7 Your Honor received -- I believe Your Honor received
8 2 orders from us this morning. One is the CIT order that had
9 two attached -- two attachments, exhibit 1 being the DIP
10 agreement, exhibit 2 being the defined terms for the papers.

11 I believe that order, and I'm sure if I'm wrong folks
12 will chime in. I believe that order is, indeed, final and
13 everybody -- all the parties are fine with having that order
14 entered and submitted.

15 The second order that we submitted to Your Honor this
16 morning, the Arcus/Arch order, will need to be revised to
17 reflect the additional accommodations this morning by the
18 parties. And that order had three exhibits. An assignment
19 agreement, the DIP agreement, and the latest version of the
20 plan. And the DIP agreement, which is Exhibit 2, had three
21 exhibits. Exhibit A, the note, Exhibit B the budget, and
22 Exhibit C the competitive process.

23 We need to make changes to the order, the assignment
24 agreement, which is exhibit 1, and the note and the budget,
25 which are exhibits A and B to the DIP agreement. And we're

Colloquy

Page 6

1 hopeful that we'll be able to do that over the course of the
2 next -- and I guess I'm being optimistic, over the next 30
3 minutes or so, so that we can submit a revised form of order
4 that's acceptable to the parties.

5 I'm not sure if the parties want to set out how the
6 four or five issues that we had open yesterday were resolved,
7 or if Your Honor wants to hear how they were resolved. But I
8 would note that I believe there is still one issue that's
9 unresolved.

10 And that's a result of the -- of how one of the
11 issues was resolved by the parties. And that is that, in
12 consideration of Blank, Rome agreeing to further reduce their
13 legal fees, there was an agreement by the parties that there
14 wouldn't be a reasonableness review of those fees.

15 And I don't believe the U.S. Trustee has been in that
16 loop, and has weighed in on whether they -- whether the U.S.
17 Trustee would have an issue with that resolution by the
18 parties.

19 MR. HALPERIN: Your Honor, if I could add just one
20 thing to that? This is Alan Halperin. The agreement was that
21 it wouldn't be reviewed by the Committee for reasonableness,
22 but first it has indicated, and I can understand the concern,
23 that they don't want to have another bite taken at the apple by
24 somebody else.

25 Hence that's why there's an issue with the U.S.

Colloquy

Page 7

1 Trustee.

2 MR. FELGER: Thank you, Alan.

3 MR. SHAPIRO: There is, Your Honor. Joel Shapiro.

4 Our concept was, one of the issues was the fees. And the
5 Committee and I personally spoke this morning. And in an
6 effort to bridge the gap, so that we can all come to you this
7 morning and pass the time consensually, I offered to further
8 reduce my cap, which was set at 750, the fees are over eight,
9 and I said I would agree to reduce it to 675.

10 The additional consideration for doing all that, then
11 allowed the Committee to look at the package of my client's
12 fees and what the estate was paying for mine, but I was and am
13 willing to do that. The concept being that that is a global
14 resolution of the remaining issues.

15 And we would hope that the U.S. Trustee, in light of
16 the global resolution of the indemnities, the global resolution
17 of the insiders now be given opt in time periods as the Judge
18 directed, that all of the other things that we've done, and
19 literally, my firm, for whatever it's worth, bridging the gap
20 for my client, but that I am finished with the review process
21 and the reduction process as part of this.

22 And would ask that the Court and the form of order be
23 submitted says that the fees of Arcus, including their counsel,
24 are all approved as reasonable and we're done.

25 So we have made another 10 percent reduction off of

Colloquy

Page 8

1 it, and that would be our request, that, hopefully, everybody's
2 okay with.

3 THE COURT: Ms. Hildabrandt?

4 MS. HILDABRANDT: Yes, thank you, Your Honor. In
5 light of the particular circumstances of the case, what I
6 propose is there will be an 80 percent payout. We would like a
7 review period. It does not have to be 30 days. And we can
8 communicate with the parties.

9 My thought was more like 10 days, upon receipt of the
10 documents. Certainly, subject to attorney/client privilege,
11 and we could work that out. We do not want to stop this
12 progress. We understand all that needs to be done.

13 But to completely waive it without a opportunity to
14 review, I'm not in a position to accept that. But certainly an
15 80 percent payout, with 20 percent in escrow, subject to our
16 review at an expedited period.

17 MR. SHAPIRO: Your Honor, I'm not --

18 THE COURT: Well -- I understand what you said, Mr.
19 Shapiro. I think, Ms. Hildabrandt, what Mr. Shapiro is saying,
20 is that the offer is to reduce their fees approximately, what
21 would you say, about 20 percent, 25 percent, off of what
22 they --

23 MR. SHAPIRO: No, I capped them already --

24 THE COURT: Right.

25 MR. SHAPIRO: -- at the 750. My fees are over

Colloquy

Page 9

1 800,000.

2 THE COURT: Right.

3 MR. SHAPIRO: I'm taking --

4 THE COURT: So you're agreeing to take like a 25
5 percent deduction. Right?

6 MR. SHAPIRO: That's correct, Your Honor.

7 THE COURT: I'm just ball parking. And in return for
8 that --

9 MR. SHAPIRO: The redaction and review of all the
10 invoices and have that process, that's done. Part of my
11 consideration, I'm asking the U.S. Trustee, as part of that
12 process of reviewing the fees and expenses of a lender who are
13 not professionals of the estate, I'm not even sure Chapter 3 of
14 your trustee manual requires you to review non-professional
15 fees.

16 But putting that aside, and I'm begging the Court to
17 get this done, this is the last issue, we are finished. And as
18 part of the global release and compromise, to approve it.

19 MS. BOURKOFF: Your Honor, this is Elana Bourkoff.
20 Can I shed light on the resolution --

21 THE COURT: Sure.

22 MS. BOURKOFF: -- as to five issues that were
23 outlined so cogently by Ms. Mitchell yesterday. And this,
24 hopefully, will give Ms. Hildabrandt some additional comfort
25 that there has been extensive and good faith negotiations over

Colloquy

Page 10

1 these issues.

2 And, hopefully, as I said, that will give her comfort
3 that this issue on Mr. Shapiro's fees should go away?

4 THE COURT: I'd be happy to hear that, Ms. Bourkoff.

5 MS. BOURKOFF: Okay. All right. So --

6 THE COURT: Just, before you start Ms. Bourkoff, I
7 just want to say that, yesterday's conference was considered
8 just a settlement conference. It was not on the record.
9 Today's hearing, I am on the record.

10 And I think that's what everybody intended. So I
11 just want everybody to know that as we go forward. Is that --

12 MS. BOURKOFF: Okay. Thank you, Your Honor. So I
13 will go into some detail, then, so that the record is clear and
14 complete on these handful of issues that remain from yesterday.

15 And I am going to go in the order that Ms. Mitchell
16 raised them yesterday. So, the first issue was, in fact, this
17 issue that we just talked about, which was the ability for the
18 Committee and the U.S. Trustee to review Blank, Rome's fees for
19 reasonableness. As Mr. Shapiro had just mentioned, we were
20 told in Court last week, and obviously the fees are much higher
21 now than they were last week, that at that time Blank, Rome's
22 fees were approximately \$800,000.

23 Blank, Rome had agreed, and Versa had agreed to
24 reduce those fees and cap them at \$750,000. After we were in
25 Court last week, we -- it was brought to our attention that

Colloquy

Page 11

1 there were some additional fees that Mr. Shapiro's client had
2 apparently incurred in the approximate amount of \$95,000,
3 which, at the time, he was not aware of and, therefore, none of
4 the other parties were aware of.

5 And up until this morning, basically, the Committee
6 continued to object to those fees, because it was our
7 understanding that the 750 was "all in." Based on Mr.
8 Shapiro's -- and one other issue yesterday, Your Honor, came to
9 our attention, as well, that there was an \$80,000 fee that
10 Arcus was charging to the estate for the monitoring and
11 collateral fees that had accrued and were payable on May 1st
12 under their loan documents.

13 And obviously approved by the interim order of this
14 Court, which the Committee was just alerted to yesterday, and
15 also objected to them.

16 So in consideration for the Committee's agreement to
17 allow those fees to get paid, as well as the other concessions
18 that the parties have made, Mr. Shapiro graciously agreed to
19 cap his fees to \$675,000, and without any review by the
20 Committee and, hopefully, by the U.S. Trustee.

21 The second issue that remained outstanding yesterday
22 was that Arcus had asked for releases from everybody involved
23 in this case, including the debtor's managers, members,
24 etcetera. That, as of yesterday, was not willing to have those
25 releases be mutual.

Colloquy

Page 12

1 Not only to the managers, but also to the debtors and
2 their estate. That issue also has been resolved and,
3 basically, the revised form of order is going to reflect that,
4 for the next 20 business day period, the parties will try to
5 negotiate mutual releases to resolve that issue.

6 I don't recall the section of the order that that's
7 reflected in, but that's where it is. As well, Arcus also
8 agreed to assign, as part of the assignment of the loan to
9 Arch, any and all claims that Arcus might have against the
10 debtors and their estate.

11 The third issue that we talked about yesterday, which
12 continued to be negotiated up until, you know, literally the
13 Court jumped on the call, was this indemnity issue. And,
14 basically, we had extensive discussion yesterday in the off the
15 record conference as to the extent of the indemnification
16 approved in the interim DIP order, and whether Arcus was
17 entitled, (a) to the protections of that -- of that approval,
18 as well as additional protections that Arcus had requested.

19 And the parties have extensively negotiated the
20 indemnification provision. And I am just waiting for some
21 revised language. But basically what that provision is going
22 to say, is that Arcus continues to be protected by the loan
23 documents that it entered into with the debtor and the interim
24 order, as well as, I guess, some additional protections
25 reflected in what's now going to be section 4.5.7 of the order.

Colloquy

Page 13

6 And, you know, as we envisioned -- the only potential
7 that we envision happening here, Your Honor, and it shouldn't
8 be a surprise to you, is, obviously, given that the estate have
9 released Arcus, is the only potential we see Arcus coming back
10 into the case, is if the estate, through the debtor's managers,
11 members, whatever, and somehow they tried to implead Arcus.

12 That is the only scenario we really envision, at this
13 time. And so the only time that we actually see the
14 indemnification play in, is if Arcus, as I said, is either
15 served with a third party complaint, or served with discovery
16 in connection with a complaint that might be filed, or somehow
17 receive some other demand.

18 There's no other time during the case that the
19 indemnification would actually become applicable. For example,
20 Your Honor, if Arcus is monitoring the case, including the plan
21 of reorganization, to make sure that it's indemnification
22 rights are protected, or if somehow files some protective proof
23 of claim, or requests for an administrative claim, and there is
24 discovery or litigation over such a claim.

25 That's the first thing. The second thing, and Arcus

Colloquy

Page 14

1 has agreed to this, is that the damages claims, whatever losses
2 that Arcus might incur, including any legal fees that it might
3 incur on a going forward basis in connection with the
4 indemnification, would only get paid upon entry of an order
5 approving and allowing such a claim.

6 In other words, typically, Your Honor, there are
7 indemnification provisions where the party entitled to the
8 indemnification gets paid for its legal fees on an ongoing
9 basis. That is not going to be the case here. It's all
10 subject to approval by this Court and any Court of, you know,
11 higher competent jurisdiction.

12 The indemnity is not secured by any collateral.
13 That's another concession that has been made and confirmed in
14 this order. And the fact that, notwithstanding the release
15 that has been granted by the debtors and their estates and the
16 Committee to Arcus, in the event that Arcus -- in the event
17 that Arcus comes in and has to defend itself, and has to raise
18 issues that, you know, in defense of the indemnification,
19 notwithstanding the release, the Creditors Committee, the
20 debtors, their estates and any assignees are entitled to defend
21 such an indemnity claim, notwithstanding the release.

22 I think the only other thing that I have to say is
23 that there is actually an exclusion for an indemnification
24 claim for gross negligence or willful misconduct.

25 THE COURT: All right. Can I ask you a question, Ms.

Colloquy

Page 15

1 Bourkoff?

2 MS. BOURKOFF: Sure.

3 THE COURT: Based on what you've indicated, and I
4 appreciate greatly the time and effort that's been put into
5 this by the Committee and all the other parties, are you and
6 Mr. Halperin and the Committee satisfied that, if we cap the
7 fees of Mr. Shapiro's firm at \$675,000, that that is a
8 substantial discount from what you would expect that his fees
9 would be, based on the time that's been spent on this matter,
10 and you've been involved in that?

11 MS. BOURKOFF: You know, everything -- the
12 concessions that have been made in the last day, in the last 24
13 hours, Your Honor, have been difficult for the Committee, and,
14 you know, are not coming unreluctantly.

15 But I think as part of the overall deal, and to get
16 this thing done, and to get this company funded, I believe
17 there's a payroll that has to get funded today, we are
18 satisfied that there's no more that can be done in connection
19 with the parties negotiations at, frankly, the twenty-fifth
20 hour of, you know, of resolution.

21 So it's reluctant, but we are satisfied and we have
22 approval from the Committee, that those fees should get
23 approved and should not be reviewed any further.

24 And, frankly, I just think that, as Mr. Shapiro said,
25 it's just going to create additional fees, and it's just not

Colloquy

Page 16

1 going to let this thing, you know, die the best that it should
2 die today.

3 THE COURT: All right. Ms. Hildabrandt.

4 MS. HILDABRANDT: Yes, thanks, Your Honor. Well I
5 appreciate the presentation by the Committee, and certainly in
6 deference to their position, I will concede our position on the
7 review period. With the reservation, Your Honor, of course,
8 it's a unique situation, and of course the U.S. Trustee feels
9 that we do have authority to review such fees as expenses. But
10 certainly, let's get this payroll met, and I appreciate all the
11 work the Committee has done.

12 THE COURT: And I appreciate, Ms. Hildabrandt, your
13 understanding of the situation here. I don't think this is the
14 usual case, and there's been an amazing amount of work done by
15 all the parties. I do appreciate Mr. Shapiro's efforts towards
16 finalizing this. And I'm -- I have concerns. I think the
17 Committee has concerns.

18 And we recognize, of course, that you, on behalf of
19 the United States Trustee, would have concerns about fees.
20 It's part of the job that we do. But I think it's been
21 represented very clearly by Ms. Bourkoff, that this is part of
22 a global resolution that will, in the opinion of the Committee,
23 and I believe the other parties to the case, unless somebody
24 wants to tell me otherwise, believes that this will be cost
25 saving to the estate, rather than trying to go to make a deal

Colloquy

Page 17

1 go that's not going to go.

2 It just -- in the Court's understanding, if this
3 resolution doesn't work, the cost to the estate, in light of
4 the funding needs, and all of the other issues, and all of the
5 funds that have been expended, working towards this end, would
6 be negatively impacted in a dramatic fashion. And for that
7 reason, I believe that, from the Court's perspective, the Court
8 will accept the representations of the Committee and the other
9 parties to the case, that this is all in the best interests of
10 the estate, and part of an active negotiation, which benefits
11 the estate.

12 And I appreciate the U.S. Trustee taking the position
13 that they would not go forward, because I know it's an
14 important issue for you, Ms. Hildabrandt. But I appreciate
15 that you understand the magnitude of this issue, vis-a-vis all
16 the issues that are involved in this case.

17 MS. HILDABRANDT: Thanks.

18 THE COURT: So, therefore, Mr. Felger, I guess if --
19 I'm to sure, I guess you will be submitting the documents? I
20 do have -- from what you're telling me, and I want to hear from
21 everybody else, the order that you submitted with regard to the
22 CIT Group financing, is that in final version right now?

23 MR. FELGER: That is my understanding, Your Honor.
24 if anybody disagrees, they can certainly chime in.

25 MR. PATTERSON: Your Honor, it's Paul Patterson,

Colloquy

Page 18

1 counsel for CIT. I think we believe it is all in final form
2 and ready to go.

3 THE COURT: Okay. Then I will look at that first,
4 while I await Mr. Felger's submission of the order regarding
5 Arcus.

6 MR. FELGER: Your Honor, with respect to the Arcus
7 order, I just want to note that we need a hearing date.
8 There's a blank in section -- I believe it's section 1.3.4 for
9 a hearing. In 1.3.3, I believe, we've inserted an objection
10 date of May 12th, for objections to the change that we've made
11 to the term financing agreement, increasing the amount of that
12 financing from 25 million to 30 million.

13 We thought that was a material change, or arguably a
14 material change that folks ought to get notice of and a
15 opportunity to object, if they thought it was objectionable.
16 So we inserted a provision in the order for objections, and we
17 also have a blank for a date of a hearing to deal with any
18 objections that are filed.

19 And my thought is that we should pick a date that
20 would be acceptable, to have the disclosure statements hearing,
21 as well as the hearing on the motion that we intend to file
22 over the next couple of days to approve the competitive plan
23 process.

24 THE COURT: When would you --

25 MR. FELGER: I believe the parties have been looking

Colloquy

Page 19

1 at having a hearing on or before May 20th for the disclosure
2 statement hearing and the competitive process motion. I'm not
3 sure if the twentieth works for Your Honor.

4 THE COURT: Well let me just say this, I could --if
5 you could guarantee me that it will not exceed 2 hours, I could
6 do it in the morning. My son graduates from college that
7 afternoon, so I'm going to leave by noon.

8 So if you tell me you can do it in the morning, I
9 don't have anything else that morning. So I could do it and I
10 could do it like 9:30, 10:00, but I need to be done by noon.
11 So if 2 hours is enough, we can do it that day. Other than
12 that, I can't do it then.

13 MR. HALPERIN: If it could be earlier, Your Honor,
14 because knowing this crew, I'd be hesitant to guarantee that.
15 It's too important an issue to --

16 MR. FELGER: Yeah. How does the nineteenth -- the
17 afternoon of the nineteenth look, Your Honor?

18 MR. HALPERIN: The nineteenth doesn't work for me.

19 THE COURT: All right. That's out.

20 MS. BOURKOFF: That's all right, I can handle it. If
21 we have to. I don't want to mess up Her Honor's schedule on
22 the twentieth.

23 MR. HALPERIN: I mean, can I make a suggestion? Why
24 don't we see where we are at this meeting, and (inaudible)

25 THE COURT: I can't -- is that --

Colloquy

Page 20

1 MR. FELGER: We can't hear you, Alan.

2 MR. HALPERIN: I apologize. Why don't we see where
3 we are later this week? We can tentatively schedule the
4 nineteenth. But to the extent it looks like we're going to be
5 able to be in a position to have it a little earlier, we can
6 try and do it, in fact, earlier.

7 Because this is just corrections and amendments to
8 the earlier thing, and it's already been noticed up to the
9 world.

10 Everybody knows it's coming now, because the
11 modifications and the deal were in Court the last time.

12 MR. FELGER: Right. Your Honor, that's correct. It
13 would be, obviously, we typically need a 25 day notice for the
14 disclosure statement hearing. But as Your Honor's aware, we
15 were at a disclosure statement hearing last week, and our sense
16 is that this disclosure statement isn't going to be materially
17 different from the disclosure statement that we had before Your
18 Honor not too long ago.

19 So we're hopeful that Your Honor would be comfortable
20 reducing that 25 day notice period to what may be approximately
21 a week here.

22 THE COURT: Well let me ask you this. Are you -- are
23 you filing a new plan and disclosure statement, is that part of
24 this -- these documents, too?

25 MR. FELGER: Yes, the -- what we're contemplating is

Colloquy

Page 21

1 filing an amended plan and an amended disclosure statement, as
2 well as a motion to approve the competitive plan process, on or
3 before Monday the twelfth.

4 I mean, I think we're all hopeful we can get
5 everything by Friday, but that's an optimistic view.

6 So I would think that either by Friday, or more
7 likely Monday, we'll have those papers filed with Your Honor.

8 THE COURT: Well you'll need to file an application
9 to shorten time on the notice for the disclosure statement,
10 just to be certain. Because it is a new disclosure statement,
11 and there are changes. I don't know if they're material or
12 not, but there are changes in your disclosure statement, based
13 on who was funding the amounts and so on.

14 MR. FELGER: Correct. And we'll need an application
15 to shorten on the bid -- on the procedures motion, as well.

16 THE COURT: All right. Well just submit all of that
17 together. I'm thinking perhaps, maybe move it to a little
18 later, and then if you need -- if something is an issue that
19 you need the Court's intervention, perhaps we can have a
20 telephone conference or something in advance of the hearing
21 date and move it maybe out to the twenty-third.

22 MR. HALPERIN: Your Honor, this is Alan Halperin.
23 Obviously, we'll do whatever the Court decides is appropriate.
24 The concern from the Committees' perspective is that the
25 marketing process can't formally kick in until we have bid

Colloquy

Page 22

1 procedures approved.

2 So every day that we kick it out, is that much less
3 time for us to actually market the business, and, hopefully,
4 get competitive bidding going.

5 THE COURT: All right. Well how about if we do the
6 bid procedures, then, on the nineteenth, but we hold off on the
7 disclosure statement for like another week, to give every -- I
8 mean, that -- would that hold you up, as well?

9 MR. HALPERIN: Um --

10 THE COURT: Or if we get the bid procedures in, in
11 place, we can go from there on that.

12 MS. BOURKOFF: If bid procedures are approved on the
13 nineteenth, I would be fine with going to the twenty-third on
14 the disclosure statement hearing, if that works for Your Honor.

15 THE COURT: How does that work for everybody else?

16 MR. FELGER: Your Honor, that's fine for the debtors.
17 I would suggest we put bid procedures and the hearing on any
18 objections to the increase of the term loan amount on for the
19 nineteenth, and then the disclosure statement, perhaps, on the
20 twenty-third.

21 THE COURT: That would work for me.

22 Anybody have any objection to that?

23 MS. BOURKOFF: Nope. We're fine.

24 MR. HALPERIN: Sounds good. 9:30, Your Honor?

25 THE COURT: Excuse me? Time?

Colloquy

Page 23

1 MR. HALPERIN: 9:30?

2 THE COURT: On the nineteenth, we're going to do it
3 at 2:00.

4 MR. HALPERIN: Okay.

5 MS. BOURKOFF: Yea.

6 THE COURT: Because I have my regular motion list in
7 the morning. So we'll do it at 2:00. And on the twenty-third
8 we'll do it at 10:00.

9 MS. BOURKOFF: Okay.

10 THE COURT: And you an incorporate that, Mr. Felger,
11 in your applications to shorten time, when you submit them,
12 hopefully, by Friday. If not, I'll look at them Monday.

13 MS. BOURKOFF: Your Honor, this is Elena Bourkoff. I
14 have a question of Mr. Felger. We're going to be -- Your
15 Honor, I think, is aware that we're going to be retaining a
16 third party consultant to assist us with the competitive
17 process and marketing, etcetera. And I believe Mr. Felger's
18 going to be filing retention papers --

19 MR. FELGER: Yes.

20 MS. BOURKOFF: -- to retain NatCity Investments to do
21 that. And I believe, under the new federal rule, there's a
22 20-day notice period for such a retention application. And
23 we're wondering whether Mr. Felger would be inclined to submit
24 an application to shorten time, given the, we believe that
25 cause exists here to, you know, to shorten the notice period on

Colloquy

Page 24

1 his -- on NatCity's retention.

2 THE COURT: I'm not sure if you --

3 MS. BOURKOFF: And if the Court would be inclined to
4 consider such an application.

5 THE COURT: I'm not sure if you need the 20-day
6 period, if it's not at the beginning of the case.

7 MR. FELGER: Yeah, I think that's a first day
8 requirement.

9 MS. BOURKOFF: Oh, is that right? Okay. Great.

10 UNIDENTIFIED COUNSEL: Yeah, I agree, Elana that --

11 MR. FELGER: I think we're good.

12 UNIDENTIFIED COUNSEL: Yeah.

13 MS. BOURKOFF: Okay. Fine.

14 MR. FELGER: I do agree with you that cause would --
15 that cause would exist to shorten and we do --

16 MS. BOURKOFF: Okay.

17 MR. FELGER: -- and we will probably file an
18 application to shorten, so that we can get that application to
19 retain NatCity considered as soon as possible, because we
20 really need to get Mr. Victor up and running.

21 THE COURT: My normal process, if it's not in the
22 first 20 days, would be 5 business days.

23 MS. BOURKOFF: Okay.

24 THE COURT: If you think that's too short, then put
25 something in your application. But it would be -- if you

Colloquy

Page 25

1 submitted it by Friday, by the next Friday that order would be
2 able to be entered. So the sooner you submit it, it would take
3 approximately a week, in my normal process, as long as it's not
4 in the first 20 days.

5 So if, you know, the sooner you get that in, the
6 sooner we can it will get entered.

7 MR. FELGER: Okay.

8 MS. BOURKOFF: I have three other, sort of cleanup
9 matters, Your Honor.

10 It's Elana Bourkoff speaking.

11 THE COURT: Yes.

12 MS. BOURKOFF: The first is to tell Your Honor that
13 there is, as Mr. Felger noted, a budget that's going to be
14 attached to the Arch DIP order.

15 It's our understanding that this is sort of a
16 preliminary budget and that HIG, or I should say Arch, the
17 Committee and the debtors and CIT are going to be further
18 refining that budget.

19 And I'm not sure whether Your Honor would like to
20 have that revised, refined budget filed with the Court, or not.
21 So we would need some sort of guidance from Your Honor on that.

22 Secondly, there is one business point left on the CIT
23 and the Arch loan agreement. It relates to a financial
24 covenant, and the parties are still negotiating that. We don't
25 believe that any amendment to the documents that would be made

Colloquy

Page 26

1 would be adverse to the estate.

2 In fact, we're trying to make it beneficial to the
3 estate. So I don't believe that any amendments have to be
4 filed with the Court. But, again, Your Honor, we would look
5 for advice, or guidance from you on that.

6 And, thirdly is, there was, I think, a whole bunch of
7 motions that have been filed with the Court. Some of which, or
8 at least one of which I know is on for this Thursday, and some
9 of which were filed with applications to shorten time that are
10 still extant.

11 And so I'm wondering whether the parties think that
12 it would be a good idea, and the Court would think it would be
13 a good idea to simply carry those motions to that May 19th
14 return date that Your Honor just gave us.

15 THE COURT: All right. Let me start with the -- you
16 asked about the revised budget and some other revisions to the
17 agreement.

18 If you don't think they're material, they materially
19 change the order that the Court enters, I'm not sure that you
20 need to file them.

21 I'll leave that up to, you know, counsel for the
22 Committee and the other parties. If you want the Court to
23 approve it as an amendment to the original order that's
24 consensual and you want to submit it that way, I'm more than
25 willing to review it, and unless I have any questions, I would

Colloquy

Page 27

1 enter an order approving it.

2 If you don't think it changes what's already been
3 approved, then I really will leave that up to you.

4 MR. FELGER: I believe the order addresses the
5 budget, indicating that there's a budget attached and there
6 will be an amended budget agreed to by, I believe, May 9th.
7 And I just -- I forget, and I've seen too many versions of this
8 order, whether it says that that budget will be filed with the
9 Court, or not.

10 I don't know if anybody has a better handle on that.

11 MR. BRODY: Hi. This is Alan Brody from -- for Arch
12 Acquisitions, Your Honor. The date of May 9th is in the order.
13 I do not believe that it says that it has to be filed.

14 THE COURT: All right. Well, as I said, I'll leave
15 that up to the parties. If you think that changes the order
16 that I'm going to enter today, then -- and you think it needs
17 to be set forth on the record, then do that.

18 If you don't think it changes anything that the
19 order's fine like it is, you know, I'll leave that up to the
20 parties to say.

21 You know, it might, depending on what you end up
22 working out with it, if you wanted to be clear and document it
23 on the record what the budget is, in case there's an issue
24 later, then you can submit some consensual order as amending
25 and submitting the budget.

Colloquy

Page 28

1 But if you don't think that it really changes much of
2 what there is, then you might not need to do that. So I'll
3 leave that up to you, really.

4 I have hearings scheduled for May 9th that involve
5 the appointments of fees, exclusivity termination and so on. I
6 don't have a problem with putting -- with adjourning those, if
7 that's what the parties want, until sometime after this
8 process. And we can talk about what's a good date.

9 MR. FELGER: We talked about that a little bit before
10 Your Honor got on the call. And I'm not sure if the Committee
11 was on, at that point. We talked with Ms. Hildabrandt and HIG,
12 and I think what we talked about was that HIG was prepared to
13 withdraw their motion.

14 But my understanding is, what the U.S. Trustee and
15 the Committee would like to do, is adjourn out their motions
16 into perhaps mid or late June. Extend out the response dates
17 to a week before the hearing. And then we revisit and see
18 where we are, at that point.

19 Hopefully, if we have a disclosure statement
20 approved, and we're in a solicitation process, those motions
21 would then be withdrawn.

22 MS. HILDABRANDT: This is Martha Hildabrandt, Your
23 Honor. That's correct. We thought -- well, from my
24 perspective in looking at the calendar, we'd be comfortable
25 with a June 23rd return date, and a response time of June 16th

Colloquy

Page 29

1 for the U.S. Trustee's motion for a trustee.

2 MR. HALPERIN: Your Honor, this is Alan Halperin, on
3 behalf of the Committee. I suppose, you know, I'm not looking
4 to throw water on a happy occasion. Hopefully, everybody
5 continues to stay on board. I would suggest that, while we're
6 okay, I guess, kicking to the twenty-third, my preference would
7 probably be to kick to a shorter period, and then kick again as
8 we get closer.

9 Just because, we're not where we need to be yet, and
10 I'm a firm believer in Murphy's law, that if I were to kick it
11 to the twenty-third, that I might, in fact, need to shorten it,
12 although I'm hopeful that everything is going to be consensual
13 going forward.

14 THE COURT: All right. Let me -- how about if we put
15 it down, I have a Chapter 11 day on May 28th.

16 MR. HALPERIN: That's fine, Your Honor. My hope is
17 that it will, in fact, ultimately have to be further adjourned
18 once we get there. I just -- I'd like to keep everybody
19 focused and, hopefully, it's a non-event.

20 THE COURT: Okay. We could put it on for May 28th at
21 eleven.

22 MR. HALPERIN: That's fine.

23 THE COURT: And then, hopefully, by that point,
24 everything's resolved and it will be withdrawn.

25 Now, Mr. Brody, are you going to withdraw your motion

Colloquy

Page 30

1 -- the motion on behalf of your client?

2 MR. BRODY: Your Honor, once the order is signed, we
3 will withdraw our motion.

4 THE COURT: All right. Well for today's purposes,
5 I'll adjourn that with the Trustee's and the Committee's --

6 MR. BRODY: Thank you.

7 THE COURT: -- to the twenty-eighth. And then, if
8 you would just submit, once you're satisfied, submit a
9 withdrawal and we'll mark it as withdrawn.

10 MR. BRODY: Thank you, Your Honor.

11 MR. PATTERSON: And, Your Honor, Paul Patterson, CIT.

12 THE COURT: Yes.

13 MR. PATTERSON: Just for clarity's sake, so responses
14 will be due to those motions, then, on or before May 21, is
15 that correct?

16 THE COURT: Yes. Responses by May 21st.

17 MR. PATTERSON: Thank you.

18 MS. BOURKOFF: Thank you, Your Honor.

19 THE COURT: All right. Mr. Seiden is here in Court
20 he has -- he wants to say something on behalf of Pennsauken
21 Township.

22 MR. SEIDEN: I had, Your Honor, as I said, we
23 represent Pennsauken Township. And we're really here just for
24 the limited purpose of the priority of the taxes.

25 I spoke to Alan Brody earlier today. He advised me

Colloquy

Page 31

1 that we retain priority, insomuch as we prove valid liens and
2 we will be paid if we prove we have valid liens.

3 So I'm satisfied. Unless anybody else has a
4 different -- thinks there's a different version out there,
5 that's the way I read it.

6 UNIDENTIFIED COUNSEL: Your Honor, under the plan
7 that's attached to the DIP order itself, with respect to the
8 treatment of Pennsauken, he is correct.

9 MR. PATTERSON: Your Honor, on behalf of CIT I can
10 confirm, we added a new paragraph 8(c) that makes it clear we
11 do not prime a valid pre-petition liens that are not avoidable.
12 So I think that covers counsel's concern.

13 The other thing I would ask, briefly, kind of in the
14 housekeeping area, just for the record. Hopefully, this will
15 not be necessary, because it sounds like Your Honor is going to
16 enter both of the orders today.

17 But as Your Honor may recall, the interim order that
18 our group is currently financing under expired yesterday. I
19 have included a provision in the order that, hopefully, Your
20 Honor will enter today, referencing that you have so ordered a
21 further extension of the interim order through today, if that's
22 necessary.

23 So if the Court and parties have no objection, I
24 would ask that that so ordered extension be made a part of the
25 record today.

Colloquy

Page 32

1 THE COURT: Any objection by anybody?

2 All right. I don't hear any. I would so order that,
3 if there's a need to extend the interim order until the actual
4 entry of these additional orders, that that would be part of
5 the terms and conditions of the interim order that has been
6 extended through yesterday afternoon, and it would cover
7 whatever would need to come up in the interim, until these
8 final orders are entered.

9 MR. PATTERSON: Thank you.

10 MS. MITCHELL: Your Honor, Nancy Mitchell, on behalf
11 of Arch. What bank -- we need to fund, I believe, payroll
12 today. So we can't fund under the old Arcus documents, or our
13 new documents, until those orders are actually entered.
14 Reasonably critical that we get them entered early.

15 And since we haven't given you one of them, I know
16 that puts pressure on you. But we can only fund up until sort
17 of mid-afternoon.

18 THE COURT: All right. I'm going to do the CIT order
19 as soon as we finish today. I don't know when I'll have the
20 Arcus order. I would suggest that, if you don't think it's
21 going to be done in time, perhaps you can talk to Mr. Shapiro
22 about having his client fund and be repaid as soon as that
23 happens, something like that, on an interim basis. I don't
24 have a problem with that.

25 If it's going to need to be funded by Arch, the new

Colloquy

Page 33

1 company, I'll do it as quickly as I can, but I know you still
2 have to put this together into a form of order and get it to
3 me. So --

4 MS. MITCHELL: Yeah, I would just say, I think it is
5 unlikely that Mr. Shapiro's client's going to be prepared to
6 fund anymore.

7 THE COURT: All right. Well all I'm saying is I --

8 UNIDENTIFIED COUNSEL: Thank you, Ms. Mitchell.

9 Your Honor, we have circulated while we have been
10 speaking with Your Honor, a form of order that we hope embodies
11 the Committee's requests and the other considerations given by
12 all the parties. I would encourage everybody to review it
13 promptly, as we took this time to do that. And I'm hopeful
14 that, you know, everybody should stay together after this call
15 and let's get the order to you in the next hour.

16 MS. MITCHELL: And, Your Honor, I was really more
17 focused on -- I don't know the docketing process. Sometimes,
18 from the time that the order is signed by Your Honor until the
19 time it's actually entered on the docket, there is some sort of
20 delay.

21 I just wanted to make sure that, as soon as you had
22 signed it, there was some way for us to know that it was
23 entered, so we could all move forward. And I don't know the
24 process in New Jersey.

25 THE COURT: Well as soon as I enter it, my courtroom

Colloquy

Page 34

1 deputy will make sure it gets docketed. It's electronic, so it
2 doesn't really take all that long. And he'll be happy to
3 e-mail a copy to the parties of the signed order, as well, so
4 you'll have, as well as getting it from the docket, in case
5 there's some kind of electronic issue, he also said he'll send
6 an e-mail out to the parties with a copy of the orders.

7 MS. MITCHELL: Thank you so much.

8 UNIDENTIFIED COUNSEL: Thank you, Your Honor.

9 THE COURT: All right. And so I will look for the
10 orders and I will get them done as soon as I have time to read
11 them, once they come in.

12 MR. FELGER: Thank you, Your Honor.

13 MR. SHAPIRO: Your Honor, this is Joel Shapiro. I
14 just wanted to thank everybody on this call. This will
15 probably be my last call with the group. And I also wanted to
16 thank Your Honor. I think last week and yesterday was very
17 helpful.

18 THE COURT: Well I, you know, I've already said
19 yesterday when we were not on the record, and I also said back
20 when we had the hearing last week, that I appreciate all the
21 work of all of the parties. I know it's been extensive, time
22 consuming. It's -- it's gratifying to the Court when attorneys
23 do their job so well and work so well together.

24 And I'm not saying that -- everybody had their
25 position and represented their client's interests in resolving

Colloquy

Page 35

1 it, but in the Court's estimation, everybody was guided by
2 trying to do what was best for the estate, as well. So I'm
3 thanking all the parties for their work. All right. And I
4 will look for the orders. Thank you.

5 (Court adjourned)

6 * * * * *

7 C E R T I F I C A T I O N

8 I, Josette Jones, court approved transcriber, certify that the
9 foregoing is a correct transcript from the official electronic
10 sound recording of the proceedings in the above-entitled
11 matter.

12

13

-*Josette Jones*-

-*09/02/08*-

14

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